

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RILEY JOHANNESSEN, DANIEL C.
BADILLA, JAMES KELLEY, RONALD
KRANS, KEVIN R. WONDERS, WILLIAM
BATES, JAMES PINION, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

POLARIS INDUSTRIES INC.,

Defendant.

Case No. 0:16-cv-03348-PJS-LIB

**POLARIS INDUSTRIES INC.'S
MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL**

EXHIBIT 1

From: [Pixton, R. Allan](#)
To: [Eric Kafka](#)
Cc: ["Mary Novacheck"](#); ["Robert Wise"](#); [Theodore Leopold](#); ["Steve Calamusa"](#); [Collier, Paul D.](#); [Six, Michelle](#); [Bloomer, Andrew B.](#); [Bartoszek, Peter](#); [Mariah Wozniak](#); ["Tania Colunga"](#); [Brian E. Johnson](#); [Douglas J. McNamara](#)
Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call
Date: Thursday, June 14, 2018 6:36:00 PM

Eric,

We will look into your question and get back to you as soon as practicable. In the interim, could you please let us know the RFP to which these documents would be responsive?

Also, unless I am mistaken, this is the first time you have raised any issue about these documents. We would respectfully ask that plaintiffs refrain from sending demands on unreasonable timeframes such as the one below. Demanding that documents be produced or else within a 24 hour period is not reasonable.

Thanks,

Allan

R. Allan Pixton

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300 North LaSalle, Chicago, IL 60654

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allan.pixton@kirkland.com

From: Eric Kafka <EKafka@cohenmilstein.com>

Sent: Thursday, June 14, 2018 5:47 PM

To: Pixton, R. Allan <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>; Douglas J. McNamara <DMcNamara@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

Plaintiffs have been unable to find the underlying data and charts for testing conducted by Polaris. For example, Plaintiffs could not find the data and charts for Jonathan Dekay's January 2017 dyno testing of 850s and 1000s. See POL_SPT_RJ_00002369.0010-22. Nor could Plaintiffs find the underlying data for Nathan Dahl's November 2016 testing of the Sportsman 570s. See POL_SPT_RJ_00002244.0010-14. Based on Polaris' testing protocol, it appears that the dyno testing would have been recorded by Racepak, Edaq, or a similar data recorder. See POL_SPT_RJ_0000089.0005.

If the data and charts have been produced already, please let us know the Bates numbers. If not,

please produce the relevant data and charts by tomorrow so that Plaintiffs have an opportunity to use the information at the four upcoming depositions in June. If, for any reason, Polaris refuses to produce data and charts for its testing, please let us know tomorrow so Plaintiffs can raise this issue with the Court.

Thanks,
Eric

Eric Kafka

Associate



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From: Eric Kafka

Sent: Wednesday, June 13, 2018 7:46 PM

To: 'Pixton, R. Allan' <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; 'Collier, Paul D.' <pcollier@kirkland.com>; 'Six, Michelle' <michelle.six@kirkland.com>; 'Bloomer, Andrew B.' <abloomer@kirkland.com>; 'Bartoszek, Peter' <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>; Douglas J. McNamara <dmcnamara@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

My understanding is that you spoke on the phone to Doug this morning. While Plaintiffs are disappointed that Polaris will not respond today regarding the three pending disputes raised in my Monday letter (re: the IRs, the privilege log, and the clawback requests), Plaintiffs are willing to wait to 10:00 am on Friday to hear from you. Plaintiffs have negotiated in good faith for weeks, and in some cases months, on the issues in these three issues. Plaintiffs have compromised considerably, and we have made our final position clear. If we do not hear from you by 10:00 am on Friday, we will understand that Polaris is not reconsider its positions and Plaintiffs will contact the Court to set a hearing date for Plaintiffs' motion to compel on these three issues.

Thank you,

Eric

Eric Kafka

Associate



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From: Eric Kafka

Sent: Tuesday, June 12, 2018 12:40 PM

To: 'Pixton, R. Allan' <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; 'Collier, Paul D.' <pcollier@kirkland.com>; 'Six, Michelle' <michelle.six@kirkland.com>; 'Bloomer, Andrew B.' <abloomer@kirkland.com>; 'Bartoszek, Peter' <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

One other follow-up from Friday's call. On the call, you said that you would aim to produce the Santi and DeKay documents this week. Given that timeline, Plaintiffs ask that you provide dates for us to depose Santi and DeKay in July. If you are going to represent Mr. Yechout, please provide a July deposition date for him also.

Thanks,
Eric

From: Eric Kafka

Sent: Tuesday, June 12, 2018 12:51 AM

To: 'Pixton, R. Allan' <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

Please see the attached letter.

Thank you,
Eric

Eric Kafka

Associate



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From: Pixton, R. Allan [<mailto:allan.pixton@kirkland.com>]

Sent: Friday, June 8, 2018 1:12 PM

To: Eric Kafka <EKafka@cohenmilstein.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Thanks Eric. Plaintiffs appear to be challenging the majority of Polaris' privilege log. Obviously by providing this list to us a couple of hours before a scheduled meet and confer it does not provide us much time to prepare to meet and confer. We will do our best under the less than ideal circumstances. Talk soon.

R. Allan Pixton

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allan.pixton@kirkland.com

From: Eric Kafka <EKafka@cohenmilstein.com>

Sent: Friday, June 8, 2018 11:21 AM

To: Pixton, R. Allan <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>
Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

Please see that attached.

From: Eric Kafka

Sent: Friday, June 8, 2018 10:56 AM

To: 'Pixton, R. Allan' <allan.pixton@kirkland.com>

Cc: Mary Novacheck <Mary.Novacheck@bowmanandbrooke.com>; Robert Wise <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; Steve Calamusa <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; Tania Colunga <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

We will send the list within the next hour or so.

Thanks,
Eric

From: Pixton, R. Allan [<mailto:allan.pixton@kirkland.com>]

Sent: Friday, June 8, 2018 10:52 AM

To: Eric Kafka <EKafka@cohenmilstein.com>

Cc: Mary Novacheck <Mary.Novacheck@bowmanandbrooke.com>; Robert Wise <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; Steve Calamusa <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; Tania Colunga <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: Re: Johannessohn v. Polaris: Follow-up from Friday's Call

Eric,

Following up. We can't have a meaningful meet and confer on any privilege log disputes unless plaintiffs identify the specific entries which plaintiffs dispute. If you can't send those soon so we have

a chance to review, we will need to reschedule until after we have received your specific challenges.

Thanks,

Allan

R. Allan Pixton

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allan.pixton@kirkland.com

On Jun 7, 2018, at 10:35 AM, Pixton, R. Allan <allan.pixton@kirkland.com> wrote:

Eric,

We respectfully disagree with your characterizations below, which are without merit. We will make ourselves available to meet and confer tomorrow afternoon at 2 p.m. CDT per your request. Please circulate a calendar invite and dial in information.

In advance of the meet and confer, please identify the specific entries on Polaris' privilege log that you allege are improperly withheld so that we can be prepared to discuss in good faith during the meet and confer.

Thanks,

Allan

R. Allan Pixton

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allan.pixton@kirkland.com

From: Eric Kafka <EKafka@cohenmilstein.com>

Sent: Thursday, June 7, 2018 10:06 AM

To: Pixton, R. Allan <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>; Brian E. Johnson <BEJohnson@cohenmilstein.com>

Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Allan:

Regarding the privilege log issues, we held a meet-and-confer on Friday where you stated that you understood that we may need to raise the privilege log issues with the Court, and asked us to wait to receive Polaris' revised privilege log. Now that Polaris has sent over its revised privilege log, it is clear that Polaris is still withholding many documents on the same impermissible grounds that Plaintiffs highlighted in our May 21 letter and our June 1 meet-and-confer. Plaintiffs are concerned that Polaris is demanding another meet-and-confer in order to delay Plaintiffs' privilege motion. Nonetheless, if Polaris wants to hold another meet-and-confer on the privilege log issues, Plaintiffs can make themselves available any time tomorrow. Please advise of a time.

As for Polaris' requests, Plaintiffs will be producing additional documents next week.

Thanks,
Eric

From: Pixton, R. Allan [<mailto:allan.pixton@kirkland.com>]
Sent: Wednesday, June 6, 2018 8:22 AM
To: Eric Kafka <EKafka@cohenmilstein.com>
Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>
Subject: RE: Johannessohn v. Polaris: Follow-up from Friday's Call

Eric,

We respectfully disagree with plaintiffs' characterizations in the email string below, which in addition to being incorrect we find unhelpful and unproductive. By way of example only, you claim below that Polaris has not produced additional documents using the IR numbers as search terms from the six original custodians. This is not true. These documents were produced to plaintiffs on June 4.

On the question of timing of production for additional documents from the CTS2 database and additional custodian searches, we are aiming to get this production to you by the end of next week at the very latest, if not sooner.

On the privilege log issue, we urge plaintiffs to reconsider their position, which is inconsistent with the Rules, the Court's orders, and plaintiffs' obligation to meet and confer in good faith before seeking the Court's assistance through motion practice.

We will get back to you as soon as practicable on the other issues you raise in your email below.

In the interim, could you please let us know when Polaris might expect to receive the verifications for plaintiffs' interrogatories which are required under Fed. R. Civ. P. 33 and which plaintiffs have failed to produce to date? Can you please also let us know when we can expect to receive the deposition dates for the remaining named plaintiffs? And when we can expect to receive the original color photos from plaintiffs' production? And when we can expect to receive plaintiffs' fulsome document productions, including but not limited to the missing social media account productions from each of the named plaintiffs?

Thanks,

Allan

R. Allan Pixton

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allan.pixton@kirkland.com

From: Eric Kafka <EKafka@cohenmilstein.com>

Sent: Tuesday, June 5, 2018 3:18 PM

To: Pixton, R. Allan <allan.pixton@kirkland.com>

Cc: 'Mary Novacheck' <Mary.Novacheck@bowmanandbrooke.com>; 'Robert Wise' <Rob.Wise@bowmanandbrooke.com>; Theodore Leopold <tleopold@cohenmilstein.com>; 'Steve Calamusa' <SCalamusa@fortheinjured.com>; Collier, Paul D. <pcollier@kirkland.com>; Six, Michelle <michelle.six@kirkland.com>; Bloomer, Andrew B. <abloomer@kirkland.com>; Bartoszek, Peter <peter.bartoszek@kirkland.com>; Mariah Wozniak <mwozniak@cohenmilstein.com>; 'Tania Colunga' <TColunga@fortheinjured.com>

Subject: Johannessoohn v. Polaris: Follow-up from Friday's Call

Allan:

Thank you for taking the time to speak with us on Friday. I wanted to recap Friday's call, and follow up on the items that we discussed.

Regarding the requested additional IRs from the CTS2 database, Polaris stated that it was still "investigating" how to produce the additional IRs. Plaintiffs expressed concern that Polaris still had not determined how it was going to produce these IRs, given that Polaris agreed to produce these documents more than 1 month ago and that Plaintiffs want to use these documents at the upcoming late June depositions, starting on June 19. Plaintiffs explained that it is very important that Polaris produce these documents as soon as possible so that Plaintiffs can avoid deposing Polaris witnesses twice. Plaintiffs also explained that Polaris should not delay production of screenshots from the IR database due to an "investigation" of the best way to produce the documents. If there is information in the CTS2 database that cannot be captured via screenshot, then Polaris can continue to investigate how to produce that information while it at least provides the screenshots to Plaintiffs. Please confirm that Polaris will

produce the requested IRs from the CTS2 database no later than Thursday. (This will provide Plaintiffs with 7 business days to review the IRs before Mr. Dahl's deposition on June 19.) Otherwise, Plaintiffs will need to ask the Court to set a date certain.

Polaris also stated on the call that it had conducted additional searches using the IR numbers as search terms from the 6 original custodians on Friday or over the weekend. This did not happen. Please produce these documents no later than Thursday this week, or Plaintiffs will seek the Court's assistance.

Regarding the three additional custodians, Polaris asked Plaintiffs for proposed limiters for the IR numbers. Plaintiffs now suggest the following limiters: (number) / 10 (Sportsman OR heat* or hot or melt* or incident* or IR or warp*). As provided for in the ESI protocol, Polaris should make sure to de-dedup the documents as this will decrease both parties' review burden. Please provide a date certain when the documents from the three additional custodians will be produced.

The parties also discussed Joseph Yechout's documents. Polaris stated that it is still investigating whether Polaris has any of Joe Yechout's custodial documents.

Please inform Plaintiffs by Thursday whether Polaris still possesses Joe Yechout's custodial documents, and if not, please state when his documents were discarded. Plaintiffs also asked Polaris whether it will accept service for a subpoena for Joe Yechout to testify. Please inform Plaintiffs by Thursday.

Regarding the instant messages, Polaris stated that it is still "investigating" whether it possesses any instant message conversations from the 9 custodians. Polaris also stated that it uses Cisco Jabber as its instant messaging platform. Plaintiffs again emphasized the importance of Polaris producing any instant message conversations as soon as possible so that Plaintiffs can avoid deposing Polaris witnesses twice. Please inform Plaintiffs by Thursday if Polaris possesses any instant messaging conversations.

Regarding the privilege dispute, Plaintiffs explained that, due to our concerns that the privilege log was overbroad, we plan on filing a motion that will ask the Court to look at a sampling of Polaris' privilege designations, and to reject Polaris' request to clawback POL_SPT_RJ00001527 and POL_SPT_RJ00000856. Polaris stated it would send a revised privilege log by today, and a production of documents removed the privilege log by today. While Plaintiffs will review what Polaris sends over, unless Polaris produces all the documents referenced in Plaintiffs' May 21 letters, Plaintiffs will be seeking the Court's relief.

Thank you,

Eric Kafka

Associate

[<image001.jpg>](#)

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